

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN MELENDEZ, ET AL.,

Plaintiffs,

v.

DIAZ, ET AL, ,

Defendants.

Case No. 1:20-cv-01393-ADA-CDB (PC)

ORDER GRANTING PLAINTIFFS' *EX PARTE* APPLICATION FOR LEAVE TO FILE OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

ORDER AMENDING THE SCHEDULING ORDER

(ECF No. 41)

BACKGROUND

Defendants filed a Motion for Summary Judgment on January 31, 2023. (ECF No. 37). On March 7, 2023, the Court deemed the Motion for Summary Judgment suitable for disposition without the need for appearance or oral argument, given Plaintiffs' failure to timely file an opposition. (ECF No. 40). In addition, given that the Motion for Summary Judgment was unopposed, the Court vacated the motion hearing that was set for March 8, 2023. (*Id.*)

On March 8, 2023, Plaintiffs filed a Motion for Extension of Time to File an Opposition to the Motion for Summary Judgment. (ECF No. 41). Plaintiffs represented that they inadvertently mis-calendared the motion hearing date for March 8, 2024, which resulted in a mis-calendared for filing of the opposition. (ECF No. 41 p. 4). Plaintiffs filed their proposed

1 Opposition to Motion for Summary Judgment concurrently with the Motion for Extension of
2 Time. (ECF No. 41-3).

3 Defendants filed a response to Plaintiff's Motion for Extension of Time on March 10,
4 2023. (ECF No. 41). Defendants represent that they do not oppose Plaintiffs' request to
5 belatedly file an opposition, so long as the Court addresses the prejudice Defendants incurred due
6 to Plaintiffs' late filing.

7 In addition, Defendants represent that they have scheduling conflicts that would prevent
8 them from filing a reply brief before the anticipated, reset due date of March 29, 2023. (*Id.* at 2).
9 Defendants represent that the Court's ruling on Defendants' pending motion for summary
10 judgment will determine which Plaintiffs will remain in the case, and thus the number of
11 depositions that Defendants will need to take. Defendants request an extension of the fact
12 deposition deadline from May 4, 2023, to May 25, 2023. Defendants assert that this extension
13 would minimize the prejudice incurred to them by from Plaintiffs' late opposition. (*Id.* at 3).

14 STANDARD OF LAW

15 Since Plaintiffs did not seek an extension of time before the expiration of the deadline,
16 they must demonstrate "excusable neglect" to establish good cause for an extension of time to file
17 objections. Fed R. Civ. P. 6(b)(1)(B). To determine whether neglect is excusable, the Court must
18 consider four factors: "(1) the danger of prejudice to the opposing party; (2) the length of the
19 delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the
20 movant acted in good faith." *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir.
21 2000); (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395
22 (1993); *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007)). These
23 "equitable factors" are weighted at the discretion of the Court. *Pincay v. Andrews*, 389 F.3d 853,
24 860 (9th Cir. 2004).

25 ANALYSIS

26 Having weighing the *Pioneer* factors, the Court finds that Plaintiffs' counsel demonstrated
27 excusable neglect in failing to timely file Plaintiffs' opposition and finds good cause to deem his
28 late opposition timely.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiffs' Opposition to Summary Judgment is deemed to be timely filed.
2. Defendants shall file any reply not later than March 29, 2023.
3. The deadline to complete fact deposition as requested by Defendants is extended to May 25, 2023.
4. The Clerk of Court is DIRECTED to adjust the docket to reflect that the Pre-trial Conference (December 4, 2023, 1:30 p.m.) and Trial (February 6, 2024, 8:30 a.m.) will be held before the Honorable Ana de Alba, Robert E. Coyle United States Courthouse, 2500 Tulare Street, Fresno CA, 93721, Courtroom 1, 8th floor.

IT IS SO ORDERED.

Dated: **March 15, 2023**


UNITED STATES MAGISTRATE JUDGE